

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Telecommunications Carriers Eligible for Universal Service Support)	WC Docket No. 09-197
)	
Lifeline and Link Up Reform and Modernization)	WC Docket No. 11-42
)	
)	

**COMMENTS OF APPLIED RESEARCH DESIGNS, INC. ON REQUEST FOR
RECONSIDERATION CONCERNING LIFELINE BROADBAND PROVIDERS**

I. INTRODUCTION

Applied Research Designs, Inc. (“AR Designs”), by its attorneys, submits the following comments on the request for reconsideration in this proceeding, pursuant to the Wireline Competition Bureau’s *Public Notice* released March 2, 2017 (DA 17-213). AR Designs was granted designation as a Lifeline Broadband Provider Eligible Telecommunications Carrier (“LBP ETC”) pursuant to the Bureau’s *Order* released on January 18, 2017,¹ only to have that designation rescinded in the Bureau’s *Order on Reconsideration* of February 3, 2017.²

AR Designs submits that the Bureau erred in issuing a blanket rescission of all the LBP grants issued to date regardless of their individual merits, and specifically in rescinding AR Designs’ designation, which unlike many of the other LBP petitions was duly granted after both the full 30-day comment period and 60-day streamlined processing period prescribed under the Commission’s current LBP Rules. Indeed, wholly independent of the Bureau’s Order granting

¹ *Order*, DA 17-87 (WCB, rel. Jan. 18, 2017).

² *Order on Reconsideration*, DA 17-128 (WCB, rel. Feb. 3, 2017).

its LBP ETC petition on January 18, AR Design's LBP ETC petition was *deemed granted by operation of law* under section 54.202(d) of the Commission's Rules³ as of January 29, 2017, prior to the Bureau's blanket "reconsideration" on February 3. Moreover, none of the generalized rationales proffered by the *Order on Reconsideration* as justification for rescinding the nine LBP designations approved in two recent Bureau orders in fact pertained to AR Designs' unique, limited LBP petition. Accordingly, AR Designs respectfully urges the Bureau to reconsider its February 3 Order and reinstate AR Designs' LBP ETC designation.

II. AR DESIGNS' UNIQUE LBP PROPOSAL MERITS RECONSIDERATION

AR Designs, a certificated Minority Business Enterprise (MBE) in the City of Chicago and the State of Illinois and an established internet access services provider serving mixed- and low-income residents of the south side of Chicago on a non-Lifeline basis for over 12 years, submitted its LBP ETC petition on November 30, 2016 in order to provide Lifeline-supported broadband internet access service ("BIAS") in a limited and specifically delineated non-rural, non-Tribal area—namely, in three zip codes in the south side of Chicago.⁴ Since 2004, through a combination of its own facilities and engineering expertise coupled with leased network access arrangements, it has provided BIAS service to over 1,800 residents of Oakwood Shores, a community developed and managed by The Community Builders, Inc. (<http://www.tcbinc.org/>), a national nonprofit real estate developer that owns or manages more than 11,000 low-income, senior and mixed-income apartment units in communities throughout the United States. Oakwood Shores is located about three miles south of downtown Chicago in an economically

³ 47 C.F.R. § 54.202(d).

⁴ Petition of Applied Research Designs for Streamlined Designation as a Lifeline Broadband Provider Eligible Telecommunications Carrier, WC Docket No. 09-197, filed Nov. 30, 2016 ("AR Designs Petition").

depressed and technologically underserved “bandwidth desert” due to a dearth of affordable advanced telecommunications infrastructure.

For its LBP offering, AR Designs has partnered with The Community Builders and with leading non-profit organizations EveryoneOn and ConnectHome in helping to eliminate the digital divide by making high-speed, low-cost Internet service and computers and free digital literacy courses accessible to unconnected Americans in technologically underserved and economically depressed communities.⁵ EveryoneOn (<http://everyoneon.org/>) is a nationwide nonprofit working to eliminate the digital divide by making high-speed, low-cost Internet service and computers and free digital literacy courses accessible to unconnected Americans in technologically underserved and economically depressed communities. EveryoneOn collaborates with libraries, training centers, schools and other nonprofits to advertise free computer and Internet courses at over 8,000 training sites across the country. ConnectHome (<http://connecthome.hud.gov/>) is a collaborative pilot program of EveryoneOn and the U.S. Department of Housing and Urban Development (HUD) to connect children and families in HUD-assisted housing with access to high-speed Internet.

As described in its LBP ETC petition granted by the Bureau in January, AR Designs’ initial LBP service offering proposes 300 mbps download and 150 mbps upload speeds and unlimited Wi-Fi usage, with no data cap or overage charges, at no out-of pocket charge to Lifeline-qualified customers. Moreover, AR Designs is currently in the process of upgrading its network with its partner Windstream to enable the delivery of a still higher bandwidth capacity to its proposed designated service area.

⁵ See *id.*, Exhibit 2 (testimonial letters of EveryoneOn and The Community Builders).

In sum, AR Designs' proposed LBP service would immediately and for the first time enable deserving low income residents of this impoverished area of south side Chicago to obtain the critical, job-creating affordable high speed broadband service that should be a core public interest objective of the FCC of any administration of the 21st century. Accordingly, the Bureau should reconsider and reinstate its LBP ETC designation, in the service of speeding rather than frustrating the deployment of advanced broadband to needy low income Americans.

III. AR DESIGNS' LBP DESIGNATION WAS AUTOMATICALLY GRANTED UNDER COMMISSION RULES AND SHOULD NOT HAVE BEEN RECONSIDERED BY THE BUREAU

The Bureau's January 18 *Order*, which was set aside by its February 3 *Order on Reconsideration*, approved AR Designs' LBP ETC petition along with those of four other petitioners. In fact, however, under the Commission's Rules, AR Designs' petition was also *deemed granted under operation of law* effective January 29, 2017.

Section 54.202(d)(1) of the Commission's Rules provides:

If the petitioning common carrier has offered broadband Internet access service to the public for at least two years before the date of the filing and serves at least 1,000 non-Lifeline customers with voice telephony and/or broadband Internet access service as of the date of the filing, the common carrier's petition for designation as a Lifeline Broadband Provider eligible telecommunications carrier ***shall be deemed granted within 60 days of the submission of a completed filing unless the Commission notifies the common carrier that the grant will not be automatically effective.***⁶

As a continuous provider of BIAS service since 2004 that served over 1,800 non-Lifeline customers on the date of its petition, AR Designs' LBP ETC petition fulfilled the criteria of rule 54.202(d)(1). The petition was filed on November 30, 2017, and was duly noticed on the Commission's website with a 30-day public comment period ending on December 30, 2016.⁷ That

⁶ 47 CFR § 54.202(d)(1) (emphasis added). See also *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 et al., Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 4065 para. 278 (2016).

⁷ See <https://www.fcc.gov/lifeline-broadband-provider-petitions-public-comment-periods>.

date came and went without the submission of any opposing comments. Moreover, the 60-day period prescribed by rule 54.202(d)(1) elapsed as of January 29, 2017 without any notification that the grant would not be automatically effective. Accordingly, AR Design's LBP ETC designation was deemed granted under 47 C.F.R. 54.202(d)(1) on that date.

As such, the Bureau's February 3, 2017 *Order on Reconsideration* could not lawfully rescind AR Designs' designation and should not have purported to do so. In that *Order* the Bureau expressly relied for authority on section 1.113(a) of the Rules: "[U]nder section 1.113 of the Commission's rules, '[w]ithin 30 days after public notice has been given of any action taken pursuant to delegated authority, the person, panel, or board taking the action may modify or set it aside on its own motion.'"⁸ With respect to AR Designs' petition, however, the Bureau on delegated authority may not violate an effective Commission rule, and so the Bureau cannot "tak[e] the action" of setting aside section 54.202(d)(1) of the Rules. Under that rule, AR Designs' LBP ETC petition was deemed granted by the Commission itself as of January 29. Therefore, irrespective of the arguably premature approval of the petition in the January 18 *Order*, by right and by law, the Bureau's February 3 Order could not and did not rescind the Commission grant of LBP ETC designation to AR Designs by operation of law five days earlier. For this threshold reason alone, that aspect of the *Order on Reconsideration* that purported to rescind AR Designs' LBP ETC designation should be reversed on reconsideration as plain error.

IV. THE BUREAU'S JUSTIFICATIONS FOR ITS RESCISSION ACTIONS DO NOT APPLY TO AR DESIGNS' LBP PETITION

Furthermore, none of the justifications advanced by the Bureau in the *Order on Reconsideration* in support of its blanket rescission actions in fact apply to AR Design's petition.

⁸ *Order on Reconsideration*, FCC 17-128 at para. 6 (rel. Feb. 3, 2017), *citing* 47 C.F.R. § 1.113(a). Since no petition for reconsideration implicated AR Designs' designation, section 1.106 of the Rules did not apply to that designation.

Specifically, unlike several of the other rescinded authorizations, AR Design's proposal to serve three zip codes in the south side of Chicago did not implicate section 54.202(c) of the Rules relating to Tribal notifications.⁹ Moreover, unlike several petitions, as noted above AR Design's LBP ETC petition was subjected to the full 30-day public comment period under the Rules. Accordingly, the Bureau's processing of AR Design's LBP ETC petition did not suffer from that purported "clear and obvious error."¹⁰

Finally, and importantly, there was no justifiable reason for rescinding AR Design's designation in order to "prevent waste, fraud and abuse in the Lifeline program."¹¹ The *Order on Reconsideration* asserts that rescission of all of the subject LBP ETC grants "would promote program integrity by providing the Bureau with additional time to consider measures that might be necessary to prevent further waste, fraud, and abuse in the Lifeline program," noting "[r]ecent investigations in the Lifeline program [that] raise concerns that substantial waste, fraud, and abuse appears to continue to exist in the program."¹² The Bureau cited a recent consent decree in which a wireless reseller admitted to Lifeline program violations and paid a settlement of \$30 million, and added that "[t]he Universal Service Administrative Company has also indicated that at least 16 other major Lifeline wireless resellers have used tactics similar to" the cited company, citing Congressional testimony by Chairman Pai that also focused entirely on wireless resellers.¹³

These charges and criticisms are simply inapplicable as well as unfair to AR Design, a facilities-based provider that can claim a spotless 12-year record of providing Internet access

⁹ See *id.* at paras. 9-12.

¹⁰ *Id.* at para. 13.

¹¹ *Id.* at para. 7.

¹² *Id.*

¹³ *Id.* at para. 7 & n. 17, citing testimony of FCC Commissioner Ajit Pai Before the Subcommittee on Communications and Technology of the United States House of Representatives Committee on Energy and Commerce, Oversight of the Federal Communications Commission, *passim* at 4-5 (July 12, 2016), available at <https://www.fcc.gov/document/commissionerpai-statement-house-oversight-hearing>.

service to over 1,800 Chicagoans in partnership with prominent and reputable non-profit organizations.¹⁴ Indeed, as a certified Minority Business Enterprise (MBE) in both the City of Chicago and the State of Illinois, AR Designs undergoes strict annual vetting, including in order to participate in the Illinois Business Enterprise Program (BEP).¹⁵ Having already proven its bona fides as a reputable MBE providing services to low income citizens of Chicago since 2004, AR Designs has pledged to the FCC that it will adhere to all Lifeline program rules, including reliance on the NLAD and the soon to be deployed National Lifeline Verifier.¹⁶ It is simply unfair and capricious to rescind AR Designs' ETC designation, duly obtained in reliance on currently operative FCC rules, based on sheer conjecture regarding imagined future violations of Lifeline program rules, citing past abuses by different service providers employing different, non-facilities-based business models.

* * *

Just yesterday, in his first major policy address as Chairman,¹⁷ Chairman Pai, in advocating for his “Gigabit Opportunity Zones” proposal to provide tax incentives for ISPs “to deploy high-speed broadband services in low-income neighborhoods,” decried both the fact that “fiber was much less likely to be deployed in low-income neighborhoods” and the “regulatory inertia” that is preventing deployment.¹⁸ AR Designs' LBP proposal does precisely what Chairman Pai seeks and breaks through the obstacles he denounces: it deploys fiber farther into

¹⁴ See AR Designs Petition at p. 9. See also *id.* at pp. 2-4.

¹⁵ *Id.* at pp. 9-11.

¹⁶ *Id.* at p. 13.

¹⁷ Remarks of FCC Chairman Ajit Pai at Carnegie Mellon University, “Bringing the Benefits of the Digital Age to All Americans,” March 15, 2017, available at <https://www.fcc.gov/document/chairman-pai-bringing-benefits-digital-age-all-americans>.

¹⁸ *Id.* at 6.


its south side Chicago service area¹⁹ through a streamlined LBP process that has cut through the regulatory inertia of protracted ETC designation proceedings. Yet the *Order on Reconsideration* sends this already-granted proposal back into the regulatory maze with no clear way forward, frustrating the very goals that Chairman Pai espouses, in a blanket reversal that ignores the individual merits of any LBP petition. The Bureau should reconsider this course and reinstate its grants of meritorious LBP proposals that advance the Chairman's and the Commission's goals.

V. CONCLUSION

For the reasons stated herein, AR Designs respectfully requests that the instant request for reconsideration be granted and that its LBP ETC designation be reinstated.

Respectfully submitted,

APPLIED RESEARCH DESIGNS, INC.

By 

James M. Smith
DAVIS WRIGHT TREMAINE LLP
1919 Pennsylvania Avenue, NW
Suite 800
Washington, DC 20006-3401
jamesmsmith@dwt.com
(202) 973-4288

Its Attorney

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¹⁹ See AR Designs Petition at p. 9.